

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
JACKSON DIVISION

BREANA SCHENK, as next
best friend to Ev M,
Em M, and El M and the ESTATE OF
KELSEY DELYLAH SCHENK-McKEE,
Plaintiff,

vs.

No. 1:22-cv-01268-STA-jay

PAUL A. THOMAS, GIBSON COUNTY
SHERIFF; and DANNY LEWIS, Chief Deputy
Gibson County Sheriff's Department and TAMELA DENISE COX,
Chief Jailor/Correction Officer of the
Gibson County Sheriff's Department and
WILLIAM HOLBROOK, Deputy/Correction Officer and
JAILER PRINCE, JAILER LITTRELL, JAILER
HILL, JAILER MORGAN, JAILER STURDIVANT,
JAILER WATSON, JAILER GILLES, JAILER
MEESE, JAILER MCARTY, JAILER YARBROUGH,
JAILER KEEL, JAILER PALMER, JAILER DANCE,
JAILER ABRAHAM, JAILER MCMINN, JAILER BAILEY,
and GIBSON COUNTY, TENNESSEE.
Defendants.

**COMBINED RESPONSE TO MOTIONS TO DISMISS AND MOTION TO AMEND
PURSUANT TO F.R.C.P. RULE 15 WITH COMBINED MEMORANDUM**

Comes now the Plaintiff, Breana Schenk, by next best friend, Ev M, Em M, and El M, by and through her attorney of record, in response to the Defendant's, and each of them, Motion to Dismiss and replies that said Complaint was filed with summons on December 2, 2022 so shown by Exhibit "A". The Plaintiff must amend her pleadings.

Now, having as stated Plaintiff moves this Court pursuant to F.R.C.P. Rule 15 (a)(2) and Rule 15 (c) and (d) to be allowed to amend her complaint and file it as a supplemental pleading as

proposed in attached Exhibit “B”. Rule 15 (c) states as follows: “(c) Relation Back of Amendments.

- (1) When an Amendment Relates Back. An amendment to a pleading relates back to the date of the original pleading when:
 - (A) the law that provides the applicable statute of limitations allows relation back;
 - (B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading; or
 - (C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:
 - (i) received such notice of the action that it will not be prejudiced in defending on the merits; and
 - (ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party’s identity.”

Said proposed Amended Complaint (Exhibit “B”) complies with Rule 15 (c) in that it relates back to the events in question. All parties and persons in the proposed Amended Complaint even though not properly named received notice by way of department heads being served such that they know or should have known that the action would have been brought but for mistake.

Said proposed Amended Complaint seeks to cure the defective pleading and correct insufficiently stated claims and should be allowed. FPP 1473, 1474, *Ford Motor Co. vs. U.S.*, 896 F. Supp. 1224, 1230 (1995).

For the above stated reasons in this Motion and Combined Memorandum, the Plaintiff respectfully requests to be allowed to amend her Complaint as proposed in Exhibit “B”, and be

allowed to serve same.

Respectfully submitted,

s/Robert T. Keeton, III
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*Counsel for Breana Schenk, by next best
friend Ev M., Em M, and El M*

CERTIFICATION

This is to certify that I have contacted each attorney or have attempted to do so. Their response is as follows:

Nathan Daniel Tilly: X Agreed Objected Was not available

This the day of March, 2023.

s/Robert T. Keeton, III
ROBERT T. KEETON, III BPR#013296